

### REMARKS

In the present situation, the application as filed contained the language “Formula (H-II) according to the present invention has the same meaning as formula (B-II) according to JP-A-2002-319491. A preferred range of the formula (B-II), including formulae (B-III) through (B-X) shown in JP-A-2002-319491, also applies to formula (H-II).” This language appears in lines 11-15 on page 34 of the specification. Material from JP 2002-319491 has now been incorporated into the specification. Where there is a clear intent to incorporate certain material from a document by reference and the incorporated document is uniquely identified in the specification, the text of the material originally incorporated by reference in the application may be added by amendment of the application. As stated in 37 CFR 1.57(f), “Any insertion of material incorporated by reference into the specification or drawings of an application must be by way of an amendment to the specification or drawings.”

In considering incorporation by reference, a distinction must be made between two different scenarios. The first is incorporation by reference where the full text of the material being incorporated will *not* be present in the patent when it issues, and instead the patent will incorporate the material only by reference. In this scenario, such subject matter must be non-essential subject matter if a non-U.S. patent is relied upon. Essential material cannot be incorporated by reference unless the incorporation is through a U.S. patent. The second scenario is the situation in which an incorporation by reference in an application is used as a basis for *amending* the application to include the text of the essential material which had been incorporated by reference when the application was filed. The current situation falls into the second scenario.

The attempted incorporation by reference of essential material in Applicants’ application as filed is correctable by amendment under 37 CFR 1.57(f) to amend the specification to include the essential material incorporated by reference. This amendment is accompanied by a copy of JP 2002-319491 and by a verified translation thereof into English.

Support for the previously incorporated material being now being expressly recited in the present specification is found as to formula (B-II), on pages 11-16 in JP 2002-319491, and as to formula (B-X), on pages 11, 12<sup>1</sup>, and 28 in JP 2002-319491. Applicants state that the material

---

<sup>1</sup> It is indicated at the bottom of page 12 of JP 2002-319491 that “R<sup>a</sup> is ... particularly preferably an aryl group.”

being inserted is the material which was previously incorporated by reference and that the amendment to the specification contains no new matter.

It is respectfully submitted that, in view of the foregoing, Applicants may properly amend the claims herein based upon the now express disclosure formerly incorporated by reference.

This is in response to the Office Action of October 28, 2010. Claims 1 and 2 are pending in the application. Claim 1 is amended to limit the specifically identified host material to those having the formula identified in the specification as "(B-X)." No new matter is introduced into the application by this amendment.

Issue under 35 U.S.C. 103(a)

Claims 1 and 2 were rejected under 35 U.S.C. 103(a) as being unpatentable over US 2002/0074935 A1 (Kwong) in view of US 2002/0028329 A1 (Ise) "as evidenced by" US 2006/0057427 A1 (Tsukahara) and US 2008/0054799 A1 (Satou). Office Action, pages 3-6. The rejection does not apply to claims 1 and 2 as presented hereinabove.

Declaration under 37 CFR 1.132

Enclosed herewith is a Declaration under 37 CFR 1.132 which presents additional comparative experimental data in order to provide further evidence of unexpected beneficial results provided by the present invention. In the Declaration, the present invention is represented by sample number 105 and by additional examples 1, 2, 3, 4, and 5 (external quantum efficiencies = 9.3%, 9.2%, 9.0%, 9.3%, 8.8%, and 8.5%, respectively). It can be seen from the results reported in the Declaration that the present invention is unexpectedly superior to and exhibits unexpected and advantageous properties as compared to comparative samples numbers 101 and 102 which were originally presented on page 58 of the specification (external quantum efficiencies = 4.1% and 5.2%, respectively).

Contact information


Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Richard Gallagher, Reg. No.

28,781, at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Dated: February 28, 2011

Respectfully submitted,

By  **GARTH M. DAHLEN**  
USPTO #43,575  
per Marc S. Weiner  
Registration No.: 32,181  
BIRCH, STEWART, KOLASCH & BIRCH, LLP  
8110 Gatehouse Road  
Suite 100 East  
P.O. Box 747  
Falls Church, Virginia 22040-0747  
(703) 205-8000  
Attorney for Applicant